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TABLE OF CASES:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 86

JAMES EDWARDS, JR., *et al.*,

Petitioners,

—v.—

STATE OF SOUTH CAROLINA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF FOR PETITIONERS

Opinions Below

The opinion of the Supreme Court of South Carolina (R. 197-201) is reported at —— S. C. ——, 123 S. E. 2d 247 (1961). The opinion of the Richland County Court is not reported and is set out in the printed record (R. 188-194).

Jurisdiction

The judgment of the Supreme Court of South Carolina was entered December 5, 1961 (R. 197). The Supreme Court of South Carolina denied rehearing December 27, 1961 (R. 202-204). Petition for writ of certiorari was filed in this Court March 27, 1962 and was granted May 14, 1962. The jurisdiction of this Court rests on 28 U. S. C. §1257(3).

Constitutional Provision Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Questions Presented

Whether petitioners were denied due process of law as secured by the Fourteenth Amendment to the Constitution of the United States:

1. When arrested and convicted on warrants charging common law breach of the peace in that petitioners' conduct, an assembly on the grounds of the South Carolina State House to express opposition to the State's policy of racial segregation, "tended directly to immediate violence and breach of the peace," on a record containing no evidence of threatened, imminent or actual violence or disorder.

2. When arrested and convicted of common law breach of the peace on the ground that their conduct, peaceful and orderly exercise of their rights of free speech and assembly allegedly "tended" to result in "possible violence" and minor interference with traffic.

Statement

Petitioners were charged with the crime of common law breach of the peace on warrants alleging that they:

> . . . on March 2, 1961, on the State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede the normal traffic, singing and parading with placards, failed to disperse upon lawful orders of police officers, all of which

tended directly to immediate violence and breach of the peace in view of existing conditions (R. 2-3).

Petitioners were tried before the Columbia City Magistrate in four trials on the 7th (R. 2-62), 13th (R. 66-124), 16th (R. 126-77), and 27th (R. 178-88) of March, 1961. As the facts and applicable law were substantially the same in each case, counsel stipulated that the appeals be treated as one case as they were by the Supreme Court of South Carolina (R. 188, 197).

The genesis of these criminal prosecutions lies in a decision of various high school and college students in Columbia, South Carolina to protest to the State Legislature and government officials against racial segregation:

> "To protest to the citizens of South Carolina, along with the Legislative Bodies of South Carolina, our feelings and our dissatisfaction with the present condition of discriminatory actions against Negroes, in general, and to let them know that we were dissatisfied and that we would like for the laws which prohibited Negro privileges in this State to be removed" (R. 111).

The Police Chief agreed that the demonstration was part of "a widespread student movement which is designed to possibly bring about a change in the structure of racial segregation laws and custom" (R. 40).

The 187 petitioners, mostly high school and college students in the Columbia area, met at the Zion Baptist Church on March 2, 1961, divided into groups of 15 to 18 and proceeded to the State House grounds (R. 6, 67, 109, 136).

The State House is occupied by the Executive, Judicial and Legislative branches of the government of the State of South Carolina. The State Legislature was in session at the time (R. 30).

The State House is in a park approximately two square blocks in area (R. 135) bordered by a sidewalk (R. 128). In front of the State House is a horseshoe shaped area "used primarily for the parking of State official's cars" (R. 99, 128). No vehicle attempted to use this area during the demonstration (R. 43, 96). At the perimeter of this parking area are sidewalks, serving as entrance and exit for those having business in the State House, which lead into the State House and park (R. 128).

The students proceeded from the church to the parking area in these small groups which were, as one of the students put it, about half a block apart, or as the Chief of Police put it, about a third of a block apart (R. 110, 86, 136), although occasionally they moved closer together (R. 86). But, "there never was at any time any one grouping of all these persons together" (R. 89-90).

As the groups arrived at the front of the State House, they were informed by the police "that they had a right, as a citizen, to go through the State House grounds, as any other citizen has, as long as they were peaceful" (R. 35, 38-39, 84, 130-131). Their permission, however, was limited to being "allowed to go through the State House grounds one time for purposes of observation" (R. 130-131 and see R. 156). This took about half an hour to forty-five minutes (R. 35, 132). As they went through the park they carried signs, such as "I am proud to be a Negro," and "Down with segregation" (R. 110, 114). The general feeling of the group was that segregation in South Carolina was against general principles of humanity and should be abolished (R. 111). Policemen were stationed throughout the park as the groups of students circled the State House (R. 22-23, 88).

As the groups returned to the parking area they were met by City Manager McNayr who ordered them to dis-

perse and to leave the State House grounds (R. 13). When they did not comply, they were lined up and marched to the City and County jails (R. 16).

There is dispute in the record whether it was before or after arrest (Compare R. 31-32 with R. 112) that the students commenced singing religious songs and the "Star Spangled Banner" and otherwise vocally expressing themselves, but there is agreement that none of this occurred until *after* the police ordered the students to end their "walk" and leave the grounds (R. 31, 45, 74). At this time, as the City Manager described it, there was "a singing, chanting, shouting response, such as one would get in a religious atmosphere . . ." (R. 74).

The students were at all times well demeaned, well dressed, orderly and peaceful (R. 24). The City Manager disagreed with this designation only to the extent that the students engaged in religious and patriotic singing after being told to disperse. He found this "flamboyant", "boisterous", and disrespectful to him personally (R. 24, 80). There was no evidence suggesting that the onlookers, who were attracted by the demonstration and the presence of police (R. 41), were anything but curious (R. 25, 27-29, 31, 41, 48, 152). Totally absent from this record are instances of threatening remarks, hostile gestures, profanity or body contact.

There was no evidence that violence occurred or was threatened by either students or onlookers. The City Manager, however, testified that among the onlookers he noticed "possible trouble makers" (R. 27), but he "took no official action against [the possible trouble makers] because there was none to be taken. They were not creating a disturbance, those particular people were not at the time doing anything to make trouble but they could have been." He did not even "talk to the trouble makers" (R. 27-30).

When the "trouble makers" were "told to move on from the sidewalks" they complied (R. 31, 41, 92).

The City Manager stated that thirty to thirty-five officers were present (R. 19). The Police Chief of Columbia testified that fifteen of his officers were present in addition to whom were State Highway Patrolmen, South Carolina Law Enforcement officers, and three Deputy Sheriffs (R. 40, 41). This was, in the City Manager's words "ample police protection" (R. 135). But he believed that "simply because we had ample policemen there for their protection and the protection of others, is no reason for not placing them under arrest when they refused a lawful request to move on" (R. 135).

The police had no particular trouble makers in mind. They merely thought that "you don't know what might occur and what is in the mind of the people" (R. 41). Asked, "you were afraid trouble might occur; from what source?" the Chief replied "you can't always tell" (R. 43). Asked, "are you able, sir, to say where the trouble was?" he replied, "I don't know" (R. 44). None of the potential "trouble makers" was arrested and pedestrians ordered to "move on at [the Chief's] command" did so (R. 92).

Concerning obstruction of the streets or sidewalks bordering the State House grounds, there is similarly no evidence. The City Manager testified that the onlookers did not block traffic on the streets (R. 26). While the students "probably did" slow traffic while waiting for traffic signals on their way to the State House (R. 88-90), once there, they were wholly within the grounds (R. 22-23, 42, 135). Their singing, after being told to disperse, slowed traffic on a City street across from the State House grounds (R. 75) but a police officer was dispatched and kept it moving (R. 36). The police were in complete control of any traffic problems (R. 43, 135). There was no evidence at all, as

stated in the warrants, that traffic congestion tended to any violence.

The City Manager testified that the onlookers blocked the sidewalks bordering the demonstration (R. 26). But they cleared the sidewalks when the police so ordered (R. 27, 42-43 and see R. 39). Pedestrians could move to their destinations both on the State House grounds and the city streets (R. 42-43).

In any event it was not interference with pedestrians or automobiles which the police acted to curtail. The City Manager who was supervising the police department at the time testified that "my official reason for dispersing the crowd was to avoid possible conflict, riot and dangers to the general public and, of course, included in the general public, was danger to these various students themselves" (R. 14). The Chief of Police acted "to keep down any type of violence or injury to anyone" (R. 37 and see R. 43, 81, 82, 85 to the same effect).

The trial court sitting without a jury found the students guilty of common law breach of the peace. The Court imposed fines of $100 or 30 days in jail in most cases; in many of these cases one-half of the fine was suspended. In a few cases the defendants were given $10 fines or five days in jail (R. 62-64; 124-25; 175-77; 186-87).

The Richland County Court affirmed, principally upon authority of *People v. Feiner*, 300 N. Y. 391, 91 N. E. 2d 319, aff'd 340 U. S. 315, concluding there was a "dangerous" (R. 193) situation and actions which a "reasonable thinking citizen knows or should know would stir up passions and create incidents of disorder" (R. 194).

The Supreme Court of South Carolina affirmed on the ground that:

"The orders of the police officers under all of the facts and circumstances were reasonable and motivated solely by a proper concern for the preservation of order and prevention of further interference with traffic upon the public streets and sidewalks" (R. 201).

Throughout the proceedings in the South Carolina courts, petitioners, by timely exception, raised and preserved federal constitutional questions. This Court granted Petition for Writ of Certiorari on May 14, 1962.

ARGUMENT

I.

Petitioners' Arrest and Conviction on Warrants Charging That Their Conduct "Tended Directly to Immediate Violence and Breach of the Peace" Is Unconstitutional in That It Rests on No Evidence of Violence, Threatened Violence or Disorder.

Petitioners' arrest and conviction of common law breach of the peace followed their publicly expressed disapproval of the racial segregation policies of the State of South Carolina. Petitioners were charged on warrants alleging that:

"On March 2, 1961, on State Capitol grounds, on adjacent sidewalks and streets, did commit a breach of the peace in that they, together with a large group of people, did assemble and impede normal traffic singing and parading with placards, failed to disperse upon lawful orders of police officers, *all of which tended directly to violence and breach of the peace* in view of existing conditions" (R. 2-3, 126, 183). (Emphasis added.)

As freedom of expression is involved the Constitution requires proof of a substantial evil that rises far above public inconvenience, annoyance, and unrest and a clear and present danger that this evil will occur. *Cantwell* v. *Connecticut*, 310 U. S. 296, 311. The Supreme Court of South Carolina modified this constitutional standard (R. 197, 200-01), defining unlawful breach of the peace as "a violation of public order, a disturbance of the public tranquility, by any act *inciting to violence*. . . . *It may consist of an act of violence or an act likely to produce violence* (R. 200) (emphasis added).

As the warrants charged petitioners with conduct which "tended directly to immediate violence and breach of the peace," they cannot be convicted of some other crime. Conviction of an accused for a charge that was never made is a violation of due process. *Cole* v. *Arkansas*, 333 U. S. 196; *De Jonge* v. *Oregon*, 299 U. S. 353, 362.

It is equally true that an accused cannot be convicted "upon a charge for which there is no evidence." *Garner* v. *Louisiana*, 368 U. S. 157; *Thompson* v. *Louisville*, 362 U. S. 199, 206; *Taylor* v. *Louisiana*, 370 U. S. 154.

But this record is entirely without proof of violence or threatened violence on the part of the petitioners. On the contrary, the testimony of the City Manager of the City of Columbia, the person in charge of police officers at the scene, and the Chief of Police of the City of Columbia fails to reveal a single overt act of any kind which could be considered violent or to presage violence.

Equally true, there was no evidence of violence or threatened violence by onlookers. The City Manager described them as curious (R. 25). The most that can be said is that the City Manager spotted unnamed people in the crowd who were recognized as "possible trouble-makers" (R. 27), or "potential trouble" (R. 29). Yet none

of these "trouble makers" refused to move on when told to by the police. None complained or made threatening remarks or gestures or did anything at all to distinguish themselves (R. 31). None gave any cause for arrest (R. 27, 81-82, 148). At one point the Chief of Police even refused to characterize any of the onlookers as trouble makers, testifying that it was difficult to know what was in the minds of the onlookers (R. 41).

A few direct quotations serve to illustrate that there was no actual or threatened violence. On cross-examination, the Chief testified (R. 43, 44):

> Chief: We were afraid that trouble might have come.
>
> Counsel: I see. You were afraid trouble might occur; from what source?
>
> Chief: You can't always tell.
>
> Counsel: But, if you regarded on this occasion it was sufficiently apparent to require you to arrest them, certainly you must have had something in mind?
>
> Chief: It is my duty to try to avoid trouble if I can, as a police officer.
>
> Counsel: I fully appreciate that. I certainly do, but I simply asked you, where was the trouble?
>
> Chief: Actually any trouble hadn't happened but if you can prevent trouble, it is your duty to do so.
>
> Counsel: I go along with that. Are you able, sir, to say where the trouble was?
>
> Chief: I don't know.

The City Manager, McNayr, testified (R. 27, 28):

> McNayr: I'm afraid that curiosity changes and brings forth possible elements which could create difficulty.

Counsel: Did you see any of those possible elements?

McNayr: Yes, I did, as I have on every occasion when these groups have demonstrated.

Counsel: Speaking of this particular occasion, did you see the possible elements there that day?

McNayr: Yes.

Counsel: Who were those persons?

McNayr: I can't tell you who they were. I can tell you they were present in the group. They were recognized as possible trouble makers.

Counsel: Did you and your police chief do anything about placing those people under arrest?

McNayr: No, we had no occasion to place them under arrest.

Counsel: Now, sir, you have stated that there were possible trouble makers and your whole testimony has been that, as City Manager, as supervisor of the City Police, your object is to preserve the peace and law and order?

McNayr: That's right.

Counsel: Yet you took no official action against people who were present and possibly might have done some harm to these people?

McNayr: We took no official action because there was none to be taken. They were not creating a disturbance, those particular people were not at that time doing anything to make trouble but they could have been.

Counsel: Did you order them off the State House grounds?

McNayr: They were not on the State House grounds, those that I observed.

Counsel: Did you order them off the streets adjacent?

McNayr: They were on public sidewalks and we made them clear the sidewalks so that people could get through.

Counsel: You don't know who these people were but nevertheless you recognized them as trouble makers?

McNayr: I don't know them by name—no.

Counsel: But the minute you spotted them, you knew they were trouble makers?

McNayr: I knew there was a possibility of trouble there.

Counsel: Yet you took no official action against them?

McNayr: The official action I took was to get rid of the cause of the possible difficulties.

Counsel: But you just said the Negro students weren't doing anything wrong, that is, in terms of misdemeanor?

McNayr: They were not obeying lawful orders, what I consider lawful orders in dispersing. They were the cause of the group gathering. The group, the so-called trouble makers, would never have appeared had it not been for the demonstration taking place.

(R. 135):

Counsel: You also stated that, in your judgment, you had ample police protection to handle the situation.

McNayr: That's correct.

The presence of the onlookers alone does not permit an inference of violence or threatened violence. This Court has rejected the contention that the unsubstantiated opinion of police officers as to possible disorder is sufficient to sustain criminal conviction. *Garner* v. *Louisiana*, 368 U. S. 157; *Taylor* v. *Louisiana*, 370 U. S. 154; *Thompson* v. *Louisville*, 362 U. S. 199. Cf. *Hague* v. *C. I. O.*, 307 U. S. 496, 516. Compared with the riotous circumstances of

Terminiello v. *Chicago*, 337 U. S. 1, 3 and the mob action in *Sellers* v. *Johnson*, 163 F. 2d 877 (8th Cir. 1947), cert. denied, 332 U. S. 851, the conduct shown by this record does not indicate even a remote threat to public order.

The warrants also charged that the students did "impede the normal traffic . . . which tended directly to immediate violence and breach of the peace" (R. 3, 126, 183). But clearly no violence occurred or was threatened. It is equally clear that there was no impediment to traffic sufficient to sustain these convictions, nor was it shown that traffic problems "tended directly to immediate violence."

The Supreme Court of South Carolina concluded that the adverse effect on traffic was a factor justifying their arrests and convictions although the City Manager and Chief of Police testified that the students were not arrested for this reason (R. 14, 37, 43, 81-82, 85, 135). But neither in the conduct of the petitioners nor the onlookers can one find in the record that the students impeded traffic.

The state's witnesses testified that the students approached the State House grounds in distinct small groups, about one-third or one half of a block apart walking in pairs or single file (R. 7, 8, 19, 39, 78). The only time there was any closer grouping was when the students were stopped by the State's officials (R. 86, 136, 137, 166) or when the students stopped to obey traffic regulations (R. 88-89).

There was no obstruction of pedestrian or vehicular traffic within the State House grounds. The Chief of Police testified that pedestrians could use the sidewalks on the State House grounds with no difficulty (R. 39, 42-43). The City Manager supported this view (R. 78-79). The horseshoe area in front of the State Capitol, a limited parking area used by members of the State House of Representa-

tives and other officials, was where the groups were told to disperse and later arrested. No car attempted to get in or out of the area during the time the students were present (R. 11). The City Manager and Police Chief agreed that ample police protection was available to meet any problems which might arise (R. 134, 135).

There was no blocking of the streets outside the State House grounds (R. 26). The students themselves obeyed all traffic regulations (R. 88, 89). The most that can be said is that the vehicular traffic was slowed (R. 76). However, traffic signals were working (R. 154) and an officer was dispatched to keep traffic moving (R. 36). The need for policemen to help with the traffic cannot justify these arrests. If anything is a common occurrence in American life, it is the dispatching of a police officer to direct traffic when some event has occurred which attracts the curious.

The testimony shows that there were a number of onlookers on the sidewalks bordering the State House grounds (R. 25, 26, 41, 152). Yet the City Manager and the police related that anyone blocking a sidewalk moved when asked and that passage was unimpeded (R. 27, 42, 43).

Absent some overt act of violence or actual interference with traffic, the police opinion of possible disorder, on which the Supreme Court of South Carolina rested its affirmance of these convictions, finds no support in the record.

II.

The Conviction of the Petitioners of Common Law Breach of the Peace Violated Their Rights of Free Speech and Assembly Under the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

This Court has stated that the right of peaceful assembly is a right cognate to those of free speech and free press and equally fundamental. *De Jonge* v. *Oregon*, 299 U. S. 353, 364. Consequently, this Court has held that freedom of assembly can be abridged only when it is shown that there exists a clear and present danger to public safety. *Schenck* v. *United States*, 249 U. S. 47, 52; *Whitney* v. *California*, 274 U. S. 357, 376; *Cantwell* v. *Connecticut*, 310 U. S. 296, 308; *Thomas* v. *Collins*, 323 U. S. 516, 530.

Nowhere in the record is there any evidence of violence, actual or threatened. At most there are references to "possible troublemakers" among the onlookers, but not among the petitioners. These "troublemakers" were never identified and so slight was the possibility of danger from them, that the police failed to arrest even one. Petitioners' "communication considered, in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render [them] liable to conviction of the common law offense in question." *Cantwell* v. *Connecticut*, 310 U. S. 296, 311; cf. *Thornhill* v. *Alabama*, 310 U. S. 88, 105-106.

Under the circumstances the interests of the State were insufficient to justify restriction of freedom of speech and assembly. This Court has upheld the right to free speech in circumstances far more incendiary. *Terminiello* v. *Chicago*, 337 U. S. 1; *Hague* v. *C. I. O.*, 307 U. S. 496; *Kunz* v.

New York, 340 U. S. 290. Cf. *Sellers* v. *Johnson*, 163 F. 2d 877 (8th Cir. 1947) cert. denied 332 U. S. 851; *Rockwell* v. *Morris*, 10 N. Y. 2d 721, 176 N. E. 2d 836 (1961) cert. denied, 368 U. S. 913.

Petitioners assembled to express their dissatisfaction with the facially discriminatory policies of the State of South Carolina on the grounds of the State Legislative Building while the Legislature was in session. It is difficult to conceive of a more appropriate and effective time and place to exercise the rights of freedom of speech and assembly. Cf. *Hague* v. *C. I. O.*, 307 U. S. 496, 515; *United States* v. *Cruikshank*, 92 U. S. 542, 552.

Feiner v. *New York*, 340 U. S. 315, does not support these convictions. In that case, there was at least one threat of violence from onlookers (at p. 317). "[P]edestrians were forced to walk in the street to avoid the crowd. . . . The crowd was restless and there was some pushing, shoving and milling around" (p. 317). The "crowd was pressing closer around petitioner and the officer" (p. 318). The speaker had passed "the bounds of argument or persuasion and [had undertaken] incitement to riot" (p. 321).

In this case, however, there was no indication of threats from onlookers, traffic was not seriously hampered, the crowd was "curious," and there was no overt sign of hostility toward the petitioners. Moreover, according to the City Manager himself, enough peace officers were present to cope with the onlookers should trouble have occurred (R. 135).

If freedom of speech and of assembly are to be abridged, some overriding state interest, not merely a possibility of violence or slowdown of traffic, must be shown. The true interest and, indeed, duty of the State was to protect the petitioners in their peaceful expression, not arrest them on

account of the actions of others. Instead, there is even some evidence that state officials had decided to limit the assembly even before it was begun. The students were instructed by a public official that although permission was granted to go through the State House grounds once, "walking around and around is a breach of the peace. You have no right to go on these grounds for demonstration" (R. 156, 130-131). As this Court said in *Hague* v. *C. I. O.*, 307 U. S. 496, 516, ". . . uncontrolled official suppression of the privilege [of free speech] cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." Surely if the police felt there was danger from "troublemakers" it was their duty to remove them, not petitioners. "Among free men, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly." *Whitney* v. *California*, 274 U. S. 357, 378, Mr. Justice Brandeis concurring.

Without an obligation on the part of the police to take all reasonable measures to protect persons asserting their First Amendment rights, the freedoms guaranteed by the First Amendment will be largely lost. Those holding minority views will be subject to the arbitrary action of state authorities who fear "possible" violence. Expression will be dependent on the intensity of the opposition. Paradoxically, if the authorities have no duty to control tendencies to violence or impediments to traffic, the guarantees of freedom of expression will protect only the majority view or the popular view which needs no protection.

Moreover, if some slowing of vehicular and pedestrian traffic can uphold these convictions, South Carolina's use of common law breach of the peace is infected with the vice of vagueness. Petitioners were charged with the broad offense of common law breach of the peace. The Supreme

Court of South Carolina adopted the general definition found in 8 Am. Jur. 834 which extends to an act "of violence or an act likely to produce violence." Neither the general definition quoted by the Supreme Court of South Carolina nor the remainder of the section on Breach of the Peace, 8 Am. Jur. 833-37, delineates as breach of the peace, the holding of a nonviolent demonstration which causes slower traffic on streets and sidewalks. Petitioners have been unable to locate any South Carolina decision applying breach of the peace to any such situation or related situation.[1] As freedom of expression is involved, Mr. Justice Harlan's warning as to all-inclusive breach of the peace provisions is relevant, *Garner* v. *Louisiana*, 368 U. S. 157, 202:

> "But when a State seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all-inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause 'narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State.'"

To convict petitioners on the ground that their expression interfered with traffic would be to make this case like *Cantwell* v. *Connecticut*, 310 U. S. 296, 307-308. There, conviction was set aside on the ground that it was not pur-

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[1] Compare the South Carolina cases cited by the Supreme Court of South Carolina, all but one of which deal with repossessing goods sold on the installment plan. *State* v. *Langston*, 195 S. C. 190, 11 S. E. 2d 1, the other case, upheld the conviction of a Jehovah's Witness who played phonograph records on the porches of private homes and used a sound truck.

suant to a narrowly drawn statute "evincing a legislative judgment that street discussion of religious affairs . . . should be regulated" (p. 308). Here, as in *Cantwell*, the situation is analogous "to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application" (*Ibid.*).

The vagueness of common law breach of the peace so applied is highlighted by the fact that petitioners were not charged with violating §1-417, of the 1952 Code of Laws of South Carolina (Cum. Supp. 1960), in which the legislature specifically addressed itself to the problem of traffic control in the State House area.[2] Even if interference with traffic could uphold these convictions, the record fails to reveal the kind of significant traffic problems sufficient to justify abridging freedom of speech and assembly. *Cantwell* v. *Connecticut*, *supra*, at p. 308.

Without more of a showing of an imminent and serious danger to the public than is found in this record, South Carolina may not abridge freedom of speech and assembly. "The fact that speech is likely to result in some violence or

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[2] §1-417 provides as follows:

"It shall be unlawful for any person:

(1) Except State officers and employees and persons having lawful business in the buildings, to use any of the driveways, alleys or parking spaces upon any of the property of the State, bounded by Assembly, Gervais, Bull and Pendleton Streets in *Columbia* upon any regular weekday, Saturdays and holidays excepted, between the hours of 8:30 a. m., and 5:30 p. m., whenever the buildings are open for business; or

(2) To park any vehicle except in spaces and manner marked and designated by the State Budget and Control Board, in cooperation with the Highway Department, or to block or impede traffic through the alleys and driveways."

in destruction of property is not enough to justify its suppression." Mr. Justice Brandeis, concurring, *Whitney* v. *California*, 274 U. S. 357, 378. And here we have no evidence of any disturbance which rises to such dignity.

CONCLUSION

WHEREFORE, for the foregoing reasons, petitioners pray the judgment below be reversed.

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